

ASSEMBLY BILL

No. 489

Introduced by Assembly Member Migden

February 21, 2001

An act to add Section 10248 to the Business and Professions Code, to add Sections 3398, 7508, 22168, and 50511 to the Financial Code, and to add Section 13984 to the Government Code, relating to residential mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 489, as introduced, Migden. High-cost home equity loans.

Existing law provides for regulation of banks and savings associations by the Department of Financial Institutions. Existing law provides for regulation of real estate brokers by the Department of Real Estate. Existing law provides for regulation of finance lenders and residential mortgage lenders by the Department of Corporations. Existing law provides that willful violations of provisions governing savings associations, real estate brokers, and residential mortgage lenders are crimes.

This bill would require the Secretary of the Business, Transportation and Housing Agency to adopt regulations with respect to the origination of high-cost real estate loans, relative to defining schemes, devices, or contrivances that are manipulative, deceptive, or otherwise fraudulent and to identifying means to curb abusive practices related to the advertising, brokering, and making of those loans. The regulations would be developed in consultation with the Commissioner of Corporations, the Real Estate Commissioner, the Commissioner of Financial Institutions, and the Attorney General, and the regulations

would be enforced by the agencies charged with regulation of specified persons and entities involved in the making of real estate loans.

Because willful violations of these provisions with respect to savings associations, real estate brokers, and residential mortgage lenders would be crimes, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There has been an explosion in the amount of credit made
4 available to low-income borrowers in recent years, as a result of
5 economic growth, technological changes, and financial
6 innovations. A significant portion of this expansion has occurred
7 in the subprime lending market, which refers to lending to
8 borrowers who do not qualify for prime rates, either because of
9 impaired credit histories or low incomes. According to the United
10 States Department of the Treasury, subprime lending nationwide
11 increased from \$35 billion in 1994 to \$370 billion in 1999.

12 (b) Subprime loans often are structured as mortgage
13 refinancings or second mortgages. Approximately 70 percent of
14 subprime loans are for consumer credit card consolidation. Most
15 subprime loans are made by nondepository finance or mortgage
16 companies that are not subject to routine regulatory compliance
17 review.

18 (c) Many subprime lenders offer a vital service to low-income
19 borrowers who do not qualify for credit from mainstream financial
20 institutions. However, many low-income borrowers have been
21 victimized by improper subprime lending practices such as
22 excessive fees and interest rates, repetitive refinancings, hidden
23 costs, unnecessary insurance, and deceptive use of balloon



1 payments. The abusive practices found in the subprime lending
2 industry are referred to as predatory lending. Through misleading
3 and deceptive sales practices, predatory lenders target cash-poor
4 homeowners as customers for high-cost loans that often deprive
5 these homeowners of the equity in their homes.

6 (d) It is the intent of the Legislature to improve consumers
7 protection against predatory lending practices.

8 SEC. 2. Section 10248 is added to the Business and
9 Professions Code, to read:

10 10248. No real estate broker or agent shall originate any
11 high-cost loan by means of any manipulative, deceptive or other
12 fraudulent scheme, device, or contrivance prohibited by the
13 regulations adopted by the Secretary of the Business,
14 Transportation and Housing Agency pursuant to Section 13984 of
15 the Government Code. The commissioner shall enforce this
16 section.

17 SEC. 3. Section 3398 is added to the Financial Code, to read:

18 3398. No commercial or industrial bank shall originate any
19 high-cost loan by means of any manipulative, deceptive or other
20 fraudulent scheme, device, or contrivance prohibited by the
21 regulations adopted by the Secretary of the Business,
22 Transportation and Housing Agency pursuant to Section 13984 of
23 the Government Code. The commissioner shall enforce this
24 section.

25 SEC. 4. Section 7508 is added to the Financial Code, to read:

26 7508. No savings association shall originate any high-cost
27 loan by means of any manipulative, deceptive or other fraudulent
28 scheme, device, or contrivance prohibited by the regulations
29 adopted by the Secretary of the Business, Transportation and
30 Housing Agency pursuant to Section 13984 of the Government
31 Code. The commissioner shall enforce this section.

32 SEC. 5. Section 22168 is added to the Financial Code, to read:

33 22168. No finance lender shall originate any high-cost loan
34 by means of any manipulative, deceptive or other fraudulent
35 scheme, device, or contrivance prohibited by the regulations
36 adopted by the Secretary of the Business, Transportation, and
37 Housing Agency pursuant to Section 13984 of the Government
38 Code. The commissioner shall enforce this section.

39 SEC. 6. Section 50511 is added to the Financial Code, to read:

1 50511. No residential mortgage lender shall originate any
2 high-cost loan by means of any manipulative, deceptive or other
3 fraudulent scheme, device, or contrivance prohibited by the
4 regulations adopted by the Secretary of the Business,
5 Transportation and Housing Agency pursuant to Section 13984 of
6 the Government Code. The commissioner shall enforce this
7 section.

8 SEC. 7. Section 13984 is added to the Government Code, to
9 read:

10 13984. (a) The Secretary of the Business, Transportation and
11 Housing Agency, with respect to the origination of high-cost real
12 estate loans, shall adopt regulations with respect to both of the
13 following:

14 (1) Defining schemes, devices, or contrivances that are
15 manipulative, deceptive, or otherwise fraudulent.

16 (2) Means to curb abusive practices related to the advertising,
17 brokering, and making of high-cost loans, in order to protect
18 consumers and the equity that homeowners have built up in their
19 homes.

20 (b) In developing the regulations under subdivision (a), the
21 secretary shall consult with the Commissioner of Corporations, the
22 Real Estate Commissioner, the Commissioner of Financial
23 Institutions, and the Attorney General to ensure that the
24 regulations appropriately address abusive high-cost lending
25 practices.

26 (c) The regulations adopted under this section shall be enforced
27 by the agencies charged with administering Section 10248 of the
28 Business and Professions Code and Sections 3398, 7508, 22168,
29 and 50511 of the Financial Code.

30 SEC. 8. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

